

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p>	<p>DATE FILED: May 3, 2024 9:31 AM</p>
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023-2024 #300 (“Valuation for Assessments”)</p> <p>Petitioners: Scott Wasserman and Ann Terry,</p> <p>v.</p> <p>Respondents: Dave Davia and Michael Fields,</p> <p>and</p> <p>Title Board: Theresa Conley, Christy Chase, and Kurt Morrison</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Petitioners:</p> <p>Thomas M. Rogers III, #28809 Nathan Bruggeman, #39621 Recht Kornfeld, P.C. 1600 Stout Street, Suite 1400 Denver, Colorado 80202 303-573-1900 (telephone) 303-446-9400 (facsimile) trey@rklawpc.com; nate@rklawpc.com</p> <p>Edward T. Ramey, #6748 Tierney Lawrence Stiles LLC 225 E. 16th Ave., Suite 350 Denver, CO 80203 303-949-7676 (telephone) eramey@TLS.legal</p>	<p>Case Number:</p>
<p>PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2023-2024 #300 (“VALUATION FOR ASSESSMENTS”)</p>	

Scott Wasserman and Ann Terry, registered electors of the City and County of Denver and the State of Colorado (“Petitioners”), through their undersigned counsel, respectfully petition this Court pursuant to C.R.S. § 1-40-107(2) to review the actions of the Title Setting Board with respect to the title, ballot title, and submission clause set for Initiative 2023-2024 #300 (“Valuation for Assessments”).

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative 2023-2024 #300.

Dave Davia and Michael Fields (hereafter “Proponents”) proposed Initiative 2023-2024 #300 (the “Proposed Initiative”). Review and comment hearings were held before representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter, Proponents submitted final versions of the Proposed Initiative to the Secretary of State for purposes of submission to the Title Board, of which the Secretary or her designee is a member.

A Title Board hearing was held on April 18, 2024, at which time titles were set for 2023-2024 #300. On April 24, 2024, Petitioners filed a Motion for Rehearing, alleging that Initiative #300 contained multiple subjects, contrary to Colo. Const. art. V, sec. 1(5.5), that the Board lacked jurisdiction to set titles, and that the Title Board set titles which are misleading and incomplete as they do not

fairly communicate the true intent and meaning of the measure and will mislead voters. The rehearing was held on April 26, 2024, at which time the Title Board granted the Motion for Rehearing only to the extent the Board made changes to the title.

B. Jurisdiction

Petitioners are entitled to review before the Colorado Supreme Court pursuant to C.R.S. § 1-40-107(2). Petitioners timely filed the Motion for Rehearing with the Title Board. *See* C.R.S. § 1-40-107(1). Additionally, Petitioners timely filed this Petition for Review within seven days from the date of the hearing on the Motion for Rehearing. C.R.S. § 1-40-107(2).

As required by C.R.S. § 1-40-107(2), attached to this Petition for Review are certified copies of: (1) the draft, amended, and final version of the initiative filed by the Proponents; (2) the original ballot title set for this measure; (3) the Motion for Rehearing filed by the Petitioners; and (4) the ruling on the Motion for Rehearing as reflected by the title and ballot title and submission clause set by the Board. Petitioners believe that the Title Board erred in denying certain aspects of the Motion for Rehearing. The matter is properly before this Court.

GROUND FOR APPEAL

The titles set by the Title Board violate the legal requirements imposed on the Board because it lacked jurisdiction to set titles for the Initiative as it contains more than one subject. The following is an advisory list of issues to be addressed in Petitioners' brief:

1. Whether the Title Board lacked jurisdiction to set a title on single subject grounds because the taxation of residential property is separate and distinct from the taxation of nonresidential property, including commercial property, and the combining of these different subjects is an improper attempt to create a political coalition to secure passage of the measure.

PRAYER FOR RELIEF

Petitioners respectfully request that, after consideration of the parties' briefs, this Court direct the Title Board to return the initiative to the designated representative for lack of jurisdiction.

Respectfully submitted this 3rd day of May 2024.

s/ Thomas M. Rogers III

Thomas M. Rogers III, #28809

Nathan Bruggeman, #39621

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ATTORNEYS FOR PETITIONERS

CERTIFICATE OF SERVICE

I, Erin Mohr, hereby affirm that a true and accurate copy of the **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2023-2024 #300 (“VALUATION FOR ASSESSMENTS”)** was sent electronically via Colorado Courts E-Filing this day, May 3, 2024, to the following:

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/s Erin Mohr _____

DATE FILED: May 3, 2024 9:31 AM



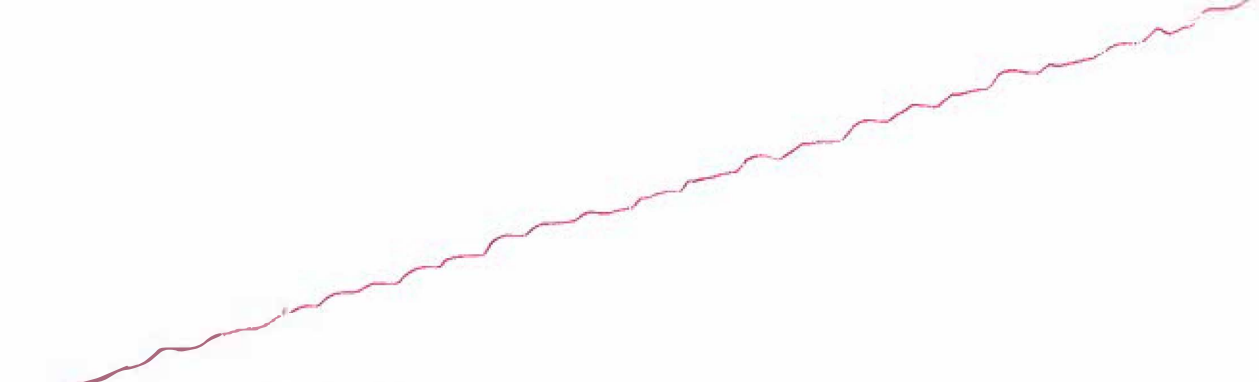
STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **JENA GRISWOLD**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, fiscal summary, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2023-2024 #300 'Valuation for Assessments'".....



.....**IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado,
at the City of Denver this 29th day of April, 2024.

Jena Griswold

SECRETARY OF STATE



Initiative 2023-24 #300
Valuation for Assessments

Received by Legislative Council Staff 3/22/24 at
4:37 pm

2023-2024 # ____

Be it Enacted by the People of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 39-1-104, **repeal and reenact with amendments** (1), as follows:

39-1-104. Valuation for assessments - definitions. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION (1), FOR PROPERTY TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2025, THE VALUATION FOR ASSESSMENT OF TAXABLE NONRESIDENTIAL PROPERTY IN THE STATE SHALL BE DECREASED FROM TWENTY-NINE PERCENT TO TWENTY-FIVE AND ONE-HALF PERCENT OF THE ACTUAL VALUE THEREOF AS DETERMINED BY THE ASSESSOR AND THE ADMINISTRATOR IN THE MANNER PRESCRIBED BY LAW, AND THAT PERCENTAGE SHALL BE UNIFORMLY APPLIED, WITHOUT EXCEPTION, TO THE ACTUAL VALUE, SO DETERMINED, OF THE REAL AND PERSONAL PROPERTY LOCATED WITHIN THE TERRITORIAL LIMITS OF THE AUTHORITY LEVYING A PROPERTY TAX, AND ALL PROPERTY TAXES SHALL BE LEVIED AGAINST THE AGGREGATE VALUATION FOR ASSESSMENT RESULTING FROM THE APPLICATION OF SUCH PERCENTAGE. THIS SUBSECTION (1) SHALL NOT APPLY TO RESIDENTIAL REAL PROPERTY, PRODUCING MINES, LANDS OR LEASEHOLDS PRODUCING OIL OR GAS, AGRICULTURAL PROPERTY, OR RENEWABLE ENERGY PRODUCTION PROPERTY.

SECTION 2. In Colorado Revised Statutes, 39-1-104.2, **repeal and reenact with amendments** (3)(q) and (3)(r), as follows:

39-1-104.2. Residential real property – valuation for assessment – legislative declaration – definitions. (3) (q) FOR PROPERTY TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2025, THE VALUATION FOR ASSESSMENT FOR MULTI-FAMILY RESIDENTIAL REAL PROPERTY IS DECREASED FROM 7.15 PERCENT TO 5.3 PERCENT OF THE ACTUAL VALUE OF THE PROPERTY.

(3) (r) FOR PROPERTY TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2025, THE VALUATION FOR ASSESSMENT FOR RESIDENTIAL REAL PROPERTY IS DECREASED FROM 7.15 PERCENT TO 5.3 PERCENT OF THE ACTUAL VALUE OF THE PROPERTY.

SECTION 3. Effective date.

This act takes effect on January 1, 2025.

Ballot Title Setting Board

Proposed Initiative 2023-2024 #300¹

The title as designated and fixed by the Board is as follows:

Funding available for counties, school districts, water districts, fire districts, and other districts funded, at least in part, by property taxes shall be impacted by a reduction of \$3 billion in property tax revenue by a change to the Colorado Revised Statutes concerning reductions in property taxes, and, in connection therewith, reducing the assessment rate for certain nonresidential property to 25.5% of the property value; and reducing the assessment rate for residential property to 5.3% of the property value.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall funding available for counties, school districts, water districts, fire districts, and other districts funded, at least in part, by property taxes be impacted by a reduction of \$3 billion in property tax revenue by a change to the Colorado Revised Statutes concerning reductions in property taxes, and, in connection therewith, reducing the assessment rate for certain nonresidential property to 25.5% of the property value; and reducing the assessment rate for residential property to 5.3% of the property value?

Hearing April 18, 2024:

Single subject approved; staff draft amended; titles set.

Board members: Theresa Conley, Christy Chase, Kurt Morrison

Hearing adjourned 8:23 P.M.

¹ Unofficially captioned “**Valuation for Assessments**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

Ballot Title Setting Board

Proposed Initiative 2023-2024 #300¹

The title as designated and fixed by the Board is as follows:

Funding available for counties, school districts, water districts, fire districts, and other districts funded, at least in part, by property taxes shall be impacted by a reduction of \$3 billion in property tax revenue by a change to the Colorado Revised Statutes concerning reductions in property taxes, and, in connection therewith, reducing the assessment rate for certain nonresidential property from 29% to 25.5% of the property value; and reducing the assessment rate for residential property from 7.15% to 5.3% of the property value.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall funding available for counties, school districts, water districts, fire districts, and other districts funded, at least in part, by property taxes be impacted by a reduction of \$3 billion in property tax revenue by a change to the Colorado Revised Statutes concerning reductions in property taxes, and, in connection therewith, reducing the assessment rate for certain nonresidential property from 29% to 25.5% of the property value; and reducing the assessment rate for residential property from 7.15% to 5.3% of the property value?

Hearing April 18, 2024:

Single subject approved; staff draft amended; titles set.

Board members: Theresa Conley, Christy Chase, Kurt Morrison

Hearing adjourned 8:23 P.M.

Rehearing April 26, 2024

Motion for rehearing (Wasserman, Terry) was granted only to the extent the Board made changes to the title (3-0).

Board members: Theresa Conley, Christy Chase, Kurt Morrison

Hearing adjourned 11:51 A.M.

¹ Unofficially captioned “**Valuation for Assessments**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Scott Wasserman and Ann Adele Terry,
Objectors,

v.

Dave Davia and Michael Fields,
Designated Representatives of Initiative 2023-2024 #300.

**MOTION FOR REHEARING ON
INITIATIVE 2023-2024 #300**

Through their legal counsel, Scott Wasserman and Ann Adele Terry, registered electors of the City and County of Denver, submit this motion for rehearing on Initiative 2023-2024 #300, and state:

On April 18, 2024, the Title Setting Board set the following ballot title and submission clause for Initiative 2023-2024 #300:

Shall funding available for counties, school districts, water districts, fire districts, and other districts funded, at least in part, by property taxes be impacted by a reduction of \$3 billion in property tax revenue by a change to the Colorado Revised Statutes concerning reductions in property taxes, and, in connection therewith, reducing the assessment rate for certain nonresidential property to 25.5% of the property value; and reducing the assessment rate for residential property to 5.3% of the property value?

In setting this title, the Board erred in the ways set forth below.

I. Initiative #300 violates the constitutional single subject requirement.

Wrapped into Initiative #300’s changes to the assessed value rates for real property in Colorado is a classic single subject violation: logrolling. The measure asks voters to provide commercial property owners with a 3.5-percentage point reduction in the assessed rate for their properties. In exchange, residential property owners receive a 1.85-percentage point reduction. The measure is thus designed to entice different political constituencies (commercial property owners and residential property owners) to come together to support a measure that combines distinct policy choices to build a winning political coalition. The Constitution does not allow this.

A. Residential Property Tax.

Property taxation is a highly charged political topic in Colorado, with concerns driven most recently by the historic increases in residential real property values. This caused many

homeowners to face eye-popping changes to their property taxes.¹ This is an issue with substantial political valiance. For example, a November 2023 poll found that a majority of voters are unhappy with their property taxes:

However, voters do have a strong opinion about how much they pay in taxes – **61% think they're too high** (27% about right). Voters earning less than \$50k stand at 68% too high / 19% about right, voters earning \$50k-100k stand at 64% too high / 25% about right, and voters earning \$100k+ stand at 53% too high / 35% about right.

Colo. Polling Institute, “What do Colorado voters think about the direction of the state and who do they trust?,” Nov. 2023, <https://www.copollinginstitute.org/research/colorado-issues-november-2023> (emphasis in original). The residential property tax issue is so important to voters that the General Assembly referred a measure to voters in the 2023 election (so-called HH) to address it, and, when that failed, the Governor called a rare special session of the General Assembly. As the Governor explained in calling the extraordinary session,

With home values rising at historic rates across Colorado, Coloradans face **an immediate crisis** with a forty-percent average increase in their property tax bills if property tax bills are not reduced. Taxpayers are facing higher property tax bills not just this year but in future years, and these are immediate, statewide concerns.

... Without the passage of Proposition HH at the ballot, there remains **an immediate and dire need** for solutions to help Coloradans impacted by rising property values.

Office of the Gov., Executive Order D 2023 24, “Call for the First Extraordinary Session of the Seventy-Fourth General Assembly,” Nov. 9, 2023, at 1-2 (emphasis added), *available at* https://leg.colorado.gov/sites/default/files/images/november_2023_special_session_letter_to_the_general_assembly.pdf. As the Governor continued, the issue extends beyond homeowners to renters who can face steep increases in their monthly rent as landlords pass on the increased residential property tax burden:

Increasing property taxes not only impacts homeowners but also renters that bear the burden of increased costs on landlords. Renters are most vulnerable to increased property taxes because they do not benefit from the corresponding gain in equity, making it harder for hardworking Colorado renters to thrive and have economic freedom.

Id. at 1. The political appeal of residential property tax relief is thus apparent, as it brings a substantial preexisting coalition of homeowners and renters to the table.

¹ See, e.g., Aldo Svaldi, “Unprecedented gains in Colorado home values preview budget-busting property tax hikes next year,” *The Denver Post*, Apr. 26, 2023, *available at* <https://www.denverpost.com/2023/04/26/colorado-home-values-property-taxes-increase/>.

B. Commercial Property Tax.

On the other side of the table are commercial property owners who have a longstanding objection to Colorado's property tax scheme based on the impact of the Gallagher Amendment. Under the Gallagher formula, which aimed to protect residential property owners, as residential property values increased, residential assessment rates were pushed down—way down—to maintain a fixed ratio of commercial to residential property tax burden. Gallagher created a zero-sum game—every increase in residential property values forced the residential assessment rate down and increased the disparity in assessment rates between residential and commercial properties.

After decades under Gallagher, the disparity between residential and commercial assessment rates grew to a level in 2020 that a business coalition, including Colorado Concern, described as having created the conditions to deliver a “crushing blow to small businesses and other commercial property owners in Colorado.” NFIB *et al.*, “Iceberg Ahead: The Hidden Tax Increase Below the Surface of the Gallagher Formula,” Oct. 2020, at 16, *available at* <https://assets.nfib.com/nfibcom/Gallagher-Tax-Increase-Report-FINAL-10-12-2020.pdf>. The problem, according to Colorado Concern and its coalition members, is that property tax rules in Colorado “require commercial property owners...to pay a property tax rate 4 times higher than residential property owners.” *Id.* at 1. They warned that if the Gallagher Amendment was not repealed, the disparity would soon require commercial property owners to “pay an assessment rate 5 times higher than residential.” *Id.*

As the coalition's words make clear, the problem for commercial property owners is the disparity between residential and commercial assessment rates. The passage of Amendment B in 2020 stopped the disparity from growing greater but left the commercial property assessment rate at 29% of actual value, as opposed to a much lower residential property assessment rate, which now sits at 7.15%.

C. Logrolling—enticing voters to reduce commercial assessed value to get a reduction in residential assessed value.

The distress of residential property taxpayers creates the conditions in which commercial property taxpayers can entice support to bring down that 29% rate by offering residential taxpayers some modest relief in their property taxes. In other words, support commercial property tax relief in exchange for residential property tax relief—but that is logrolling.

The Constitution provides that initiated measures may only have “one subject,” and where a measure has more than one subject “no title shall be set and the measure shall not be submitted to the people...” Colo. Const. art. V, sec. 1(5.5). Among the “evils” the single subject limitation guards against is

especially the practice of putting together in one measure subjects having no necessary or proper connection, for the purpose of enlisting in support of the measure the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits.

C.R.S. § 1-40-106.5(1)(e)(I). As the Court has described it, this is “the joining together of multiple subjects into a single initiative in the hope of attracting support from various factions which may

have different or even conflicting interest.” *In re Titles, Ballot Titles, & Submission Clauses for Proposed Initiatives 2021-2022 #67, #115, & #128*, 2022 CO 37, ¶ 23.

Proponents here will argue that there is only one subject in their measure, “reducing property taxes.” However, while the residential and commercial property assessment rate cuts in their measure generically concern “property taxes,” this is an instance in which Proponents are combining disparate subjects under the “type of overly broad theme that [the Supreme Court has] rejected.” *In re Title, Ballot Title & Submission Clause for 2021-2022 #1*, 2021 CO 55, ¶ 22.

The measure does not impose a uniform approach to reducing property taxes in Colorado. Instead, as noted above, Proponents have selected *different* assessed rate reductions for *different* classes of property:

- Residential property: reduction of assessed value rate from 7.15% to 5.3%, which is a 1.85-percentage point change;
- Certain nonresidential property (i.e. commercial): reduction of assessed value rate from 29% to 25.5%, which is a 3.5-percentage point change.
- Agricultural property, producing mines, oil and gas: no change.

(Proposed C.R.S. § 39-1-104 & -104.2) A commercial property rate reduction of 3.5-percentage points is not necessarily connected with a 1.85-percentage point reduction in residential rates, or with leaving the assessed value for other types of property unchanged. Stated plainly, for example, a voter may ask: is the rate cut for commercial property too much with the residential rate cut being too little?

This is the same scenario the Court recently considered with respect to Initiatives 2021-2022 #67, #115, and #128. These initiatives each sought to increase the retail availability of alcohol, and they did so by authorizing (1) the sale of wine in grocery stores and (2) third-party alcohol delivery. 2022 CO 37, ¶ 1. Although concerned that some voters would support one component of the measure but not the other, *id.* ¶ 5, the Board determined that it had jurisdiction to set titles because the changes sufficiently related to increasing the retail sale of alcohol, *id.* ¶ 22. The Court reversed.

It explained that a measure cannot survive single subject scrutiny where its different subjects are simply “related when considered at a high level of generality.” *Id.* ¶ 19. It concluded that grocery store wine sales and alcohol delivery presented such a problem. The Court noted that expanding alcohol access in grocery stores “has been a topic of legislative and public debate for decades,” and that “public debate remains unsettled.” *Id.* ¶ 21. Alcohol delivery also “presents a similarly unsettled policy choice.” *Id.* ¶ 22. Given the unsettled nature of these questions, the Board found the logrolling dilemma was present because “some voters might well support home delivery of alcohol while preferring to keep wine out of grocery stores, and others might feel precisely the opposite.” *Id.* ¶ 23. That the policy choices both implicated the retail sale of alcohol (or alcohol generally) was not enough to establish the requisite connection under the constitutional single subject standard. *See id.* ¶¶ 23-24.

The same problem is present here. Many voters have no interest in commercial property taxes—or in fact may oppose a commercial property tax reduction—but they have a substantial interest in the property tax that applies to their home given the recent *historic* increases they have faced. Initiative #300 asks voters to accept lower property taxes on some categories of property, like commercial and industrial, in exchange for some relief in their residential property tax burden. Alternatively, commercial property owners may well believe that residential property rates are too low but accept a further reduction in those rates because of their desire to reduce commercial property rates.

But the single subject requirement precludes proponents from attempting to build support for one aspect of a measure (e.g., a substantial reduction for commercial and industrial property assessed rates) by including an unrelated “sweetener” (e.g., a modest reduction for residential property assess rates). As Proponents are engaged in prohibited logrolling to unite these otherwise different political groups, the Board should find that it lacks jurisdiction.

II. The title set is incomplete and misleading.

The title set by the Board is incomplete and misleading because it does not completely describe the assessed value rate cut. The title should include, as the measure does, the current assessed rates for commercial and residential property so that voters fully understand the rate cuts they are being asked to approve:

Shall funding available for counties, school districts, water districts, fire districts, and other districts funded, at least in part, by property taxes be impacted by a reduction of \$3 billion in property tax revenue by a change to the Colorado Revised Statutes concerning reductions in property taxes, and, in connection therewith, reducing the assessment rate for certain nonresidential property from 29% to 25.5% of the property value; and reducing the assessment rate for residential property from 7.15% to 5.3% of the property value?

Accordingly, the Board should correct the title set forth above.

WHEREFORE, Objectors seek appropriate relief in light of the above claims, including the striking of the titles set and return of Initiative #300 to Proponents for failure to comply with the single subject requirement of Article V, sec. 1(5.5) of the Colorado Constitution, or correction of the misleading and incomplete ballot title that has been set.

Respectfully submitted this 24th day of April, 2024.

RECHT KORNFELD, P.C.

Tierney Lawrence Stiles LLC

s/ Thomas M. Rogers III

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s/ Edward T Ramey

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CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2023-2024 #300** was sent this day, April 24, 2024, via first-class mail, postage paid and via email to:

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s/ Erin Mohr



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Summary

Date: April 12, 2024 **Fiscal Analyst:** David Hansen (303-866-2633)

LCS TITLE: VALUATION FOR ASSESSMENTS

Fiscal Summary of Initiative 300

This fiscal summary, prepared by the nonpartisan Director of Research of the Legislative Council, contains a preliminary assessment of the measure's fiscal impact. A full fiscal impact statement for this initiative is or will be available at leg.colorado.gov/bluebook. This fiscal summary identifies the following impact.

Local government impact. By reducing residential and nonresidential assessment rates, the measure reduces property tax revenue to local government by an estimated \$3.0 billion for property tax years 2025 and 2026, and by larger amounts in later years. An estimated \$860 million in FY 2025-26 and \$870 million in FY 2026-27 will be made up through state aid for total program funding for school finance as required under current law. Overall, the measure is expected to reduce revenue for local government and school districts by \$2.1 billion in FY 2025-26, \$2.2 billion in FY 2026-27, and larger amounts in later years.

State expenditures. The measure will increase state expenditures by an estimated \$860 million in FY 2025-26 and \$870 million in FY 2026-27, and by larger amounts in later years. These amounts reflect the increased state aid obligation for school finance under current law paid to school districts due to reduced revenue under the measure.

Economic impacts. Reducing assessment rates will increase the amount of after-tax income available for homeowners and business property owners to spend, save, or invest elsewhere in the economy. The measure obligates a significant portion of the state budget to reimburse lost property tax revenue to school districts, which will reduce available funding for other state services. It also decreases local government revenue relative to the amount that would otherwise be collected. Any overall change in economic activity will depend on the net economic impacts of higher after-tax household and business income and reduced investment in public services.